

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TG-091127
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
)	
v.)	
)	FINAL ORDER GRANTING, IN
WASTE MANAGEMENT OF)	PART, PETITION FOR REVIEW;
WASHINGTON, INC., d/b/a WASTE)	REQUIRING PAYMENT OF
MANAGEMENT OF GREATER)	REDUCED PENALTY
WENATCHEE,)	
)	
Respondent.)	
)	
.....)	

1 ***SYNOPSIS.*** *In this final order, the Commission grants in part Waste Management of Wenatchee’s petition for administrative review of the initial order in this proceeding. The Commission upholds the initial order’s determination that penalties should be imposed, but substantially less than Staff originally requested. The Commission strikes the requirement that the remaining portion of the penalty be suspended on condition for one year.*

INTRODUCTION

2 **NATURE OF PROCEEDING.** This proceeding involves a complaint by the Washington Utilities and Transportation Commission (Commission) against Waste Management of Washington, Inc., d/b/a Waste Management of Greater Wenatchee (Waste Management or Company when referring to the state-wide corporation and WM Wenatchee or WM Ellensburg when referring to the specific operating divisions). In the complaint, which alleged billing improper charges to commercial customers, the Commission sought \$64,140 in penalties for 6,414 violations of RCW

80.28.080 and WAC 48070-236, which require companies to charge customers no more or less than the rates set forth in their Commission-approved tariffs.

3 **PARTY REPRESENTATIVES.** Polly L. McNeill, Summit Law Group, Seattle, Washington, represents Waste Management. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹

4 **PROCEDURAL HISTORY.** The Commission filed the complaint in this proceeding on October 20, 2009. A prehearing conference was held in Olympia, Washington, before Administrative Law Judge Patricia Clark. During the conference, the parties expressed an interest in attempting to mediate the dispute. The prehearing conference order, Order 01, entered on November 12, 2009, assigned Administrative Law Judge Adam E. Torem to serve as mediator, and scheduled a mediation session in this case. Order 01 also established a briefing schedule in the event the mediation process was unsuccessful.

5 The mediation process did not resolve the parties' dispute. On December 2, 2009, Waste Management filed its hearing brief. The Commission's regulatory staff (Commission Staff or Staff) filed its responsive brief on December 16, 2009, and Waste Management filed its reply brief on December 23, 2009.

6 Judge Clark entered an Initial Order, Order 02, on January 26, 2010, denying Waste Management's request to dismiss the complaint, and mitigating 75 percent of the penalty requested in the complaint, imposing a penalty of \$16,035, subject to the condition that the remaining penalty of \$48,105 be suspended for one year "to ensure future compliance with the Commission's rules."²

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

² *WUTC v. Waste Management of Washington, Inc., d/b/a Waste Management of Greater Wenatchee*, Docket TG-091127, Order 02 – Initial Order Granting, in Part, Mitigation of Penalty Assessment, ¶ 51 (Jan. 26, 2010) [Initial Order]. Judge Clark issued a notice of errata to Order 02

- 7 On February 16, 2010, Waste Management filed a petition for administrative review of Order 02. Commission Staff filed an answer to the petition on February 26, 2010.

MEMORANDUM

- 8 This issues before the administrative law judge and now before the Commission on review concern whether the complaint should be dismissed, and if not, the nature and appropriate amount of the penalty the Commission should assess against Waste Management. The parties agree to certain underlying facts, but disagree about how the Commission should act based on the facts.

- 9 **FACTUAL BACKGROUND.** The following facts, identified in the Initial Order, are not in dispute:³

In December 2008, Waste Management moved its customer call center from Kirkland to Oak Harbor. The customer call center handles customer inquiries for all of Waste Management's operations in Washington. The operating divisions of WM Wenatchee and WM Ellensburg serve regulated and city contract customers in Douglas, Chelan, Kittitas, and Grant counties. A customer service representative (CSR) addressing a billing inquiry depends on computer data for each city contract and Commission tariff regarding rates, service levels, and optional charges.

At the same time Waste Management moved the call center to Oak Harbor, a number of other system improvements were implemented including consolidating the computer data for WM Wenatchee and WM Ellensburg with the Company's Spokane operations. When the data were moved, certain computer links were dropped that created billing errors for WM Wenatchee and WM Ellensburg commercial customers. February and March 2009 bills sent to regulated customers served by these operations included an "environmental and fuel surcharge" that is

on January 27, 2010, corrected calculation errors in the Initial Order. The penalty amounts in this order reflect the amounts identified in the Errata.

³ Initial Order, ¶¶ 6-12; *see also* Waste Management Petition, n.2.

not in the Commission-approved tariffs for WM Wenatchee and WM Ellensburg.

In March 2009, most of the CSRs in the Oak Harbor call center were new employees. On March 17, 2009, a customer called to complain about the surcharge. The CSR told the customer the surcharge was correct and that she should call the Commission for further assistance. On the same date, the customer called the Commission and Commission Staff emailed the complaint to the District Manager named on the title page of WM Wenatchee's tariff. That individual no longer worked for the Company.

Having received no reply from the District Manager, Staff called the District Manager on March 25, 2009. A message was forwarded to the Operations Manager who returned Staff's call the same day. On March 27, 2009, the deadline to respond to Staff's email, the Operations Manager sent Staff a message that he had been unsuccessfully trying to reach the complainant but that he had discovered a clerical error in the billing. The Operations Manager acknowledged that the customer should not have been billed the surcharge and that the customer's account had been appropriately credited. In response, Staff requested the amount of credit and whether other customers had been affected by the error. The Operations Manager responded that the credit was \$2.20, other customers were affected by the error, and the Company was working diligently to rectify the issue. Later the same day, the Operations Manager notified Commission Staff that he had been able to reach the customer and explain the situation.

On April 9, 2009, Staff emailed the Operations Manager and inquired if the surcharge was only billed one month and inquired about the number of customers affected by the billing error. While it does not appear that the Operations Manager responded to Staff's inquiry, on April 30, 2009, Waste Management posted credits to each commercial customer who was erroneously billed the surcharge for January and February services.

On May 28, 2009, Staff inquired again if other customers were billed the surcharge, if those customers had also received a credit, and requested that the Operations Manager contact Staff with the requested information. On the same day, the Operations Manager responded that he had waited until all customers were credited and the issue had been resolved so that he could reply to Staff with correct information. On

May 29, 2009, Staff learned that the Company had credited a total of \$132,201.10 in improper charges to its customers.

Staff requested additional information about the billing error; the number of customers billed the surcharge and the actual amount they were credited. The Operations Manager supplied the information in an Excel spreadsheet. Staff had difficulty interpreting this data, so on June 8, 2009, WM of Wenatchee summarized the impact of its billing mistake and reported that 3,213 customers were erroneously charged in February 2009 (for January services) and 3,201 customers were erroneously charged in March 2009 (for February services).

- 10 **PETITION FOR REVIEW.** Waste Management seeks review of the Initial Order, requesting that the Commission dismiss the complaint, significantly mitigate the penalty, or eliminate or more narrowly condition the suspended penalty. The Company asserts that the Initial Order erred by relying on an incorrect understanding of the time when the Company first should have known about the billing errors. The Company also claims that, by suspending the remaining penalty amount for one year subject to compliance with all Commission rules, the Initial Order did not mitigate the requested penalty, but imposed the full penalty amount. Waste Management asks that we grant meaningful relief.
- 11 Waste Management argues that the Initial Order erred in denying the Company's request to dismiss the Complaint. The Initial Order found that the Company had failed to test the new billing database to ensure accuracy before it was used to generate billings, and denied the request for dismissal on the basis that "Waste Management is responsible for the content of its database and the actions of its CSRs who act as agents for the company."⁴ Waste Management argues that a regulated company should not be subject to penalties where it "has an understandable explanation for its billing violations, acted quickly to correct it, and put in place measures to avoid a repetition of the conduct."⁵ The Company claims that it acted swiftly to refund all customers who were overcharged, motivated by its intent to maintain customer satisfaction, not because of the threat of a complaint or penalties.

⁴ Initial Order, ¶ 40.

⁵ Waste Management Petition, ¶ 7.

- 12 On this same issue, the Company also claims that the Initial Order did not take into consideration the severity of the impact of a complaint or penalties when it denied the request to dismiss the complaint. Waste Management argues that the complaint will be on the Company's record, will cause harm to its reputation and have a potentially negative impact on the Company as a result of having to disclose the violations in other forums.⁶
- 13 If the Commission is not willing to dismiss the complaint, Waste Management argues that the penalty imposed in the Initial Order should be significantly mitigated. The Company claims the Initial Order's decision concerning appropriate mitigation of the penalty rests on a misunderstanding about when the Company would have discovered the billing error on its own. It claims that the resulting decision – imposing only 25 percent of the potential penalty, and suspending the remaining 75 percent subject to the condition of compliance with all Commission rules for one year – actually imposed the full penalty amount of \$64,140, greater than the amount Staff recommended.
- 14 Waste Management questions the Initial Order's conclusion that the Company would not have discovered the error on its own or within a reasonable time through its own internal policies and procedures.⁷ The Company asserts that this conclusion is incorrect, and not supported by the record in the proceeding.⁸ While the Initial Order concludes that the Company should have known about the error by the third business day in March under its "Day Three" procedure, the Company asserts that it would not have known of a billing anomaly until April. Waste Management clarifies that it did identify the error under its internal processes, but could not have prevented the second erroneous billing in March.⁹

⁶ *Id.* ¶ 8.

⁷ Waste Management Petition, ¶ 11, citing to Initial Order, ¶ 43.

⁸ *Id.* ¶¶ 12-13.

⁹ *Id.* ¶ 13.

- 15 The Company argues that the Commission should mitigate the penalties by applying the following criteria developed in a prior case:¹⁰

[W]hether 1) the offending conduct was associated with new requirements or issues of first impression, 2) the offending party should have known its conduct constituted a violation, 3), the offending conduct was knowing or intentional, 4) the offending conduct was gross or malicious, 5) repeated violations occurred, 6) the Commission previously had found violations, 7) the offending conduct improved, and 8) remedial steps were undertaken.¹¹

Under these criteria, Waste Management argues that anything but a minimal penalty would be disproportionate to the violations.¹² The Company notes that the Initial Order recognized that Waste Management does not have a history of noncompliance, that it acted promptly to remedy the error by crediting customers, and undertook corrective measures to ensure the billing error would not be repeated.¹³

- 16 The Company argues that the decision to suspend penalties on condition of compliance undermines the Initial Order's decision to significantly mitigate the penalty. Waste Management claims that suspending the remaining \$48,105, subject to a condition of compliance with all Commission rules "suspends a 'Sword of Damocles' over Waste Management's operations for the next year."¹⁴ The Company argues that the condition to comply with all regulations for one year is overly broad and unreasonable, and could result in the Company paying the suspended penalty due to "any violation of any rule by any operating entity ... throughout the state."¹⁵ Specifically, the Company argues that the condition should be limited to violations by

¹⁰ *Id.* ¶ 9, citing *MCImetro Access Transmission Services, Inc. v. U.S. West Communications, Inc.*, Docket UT-971063, Commission Decision and Final Order Denying Petition to Reopen, Modifying Initial Order, in Part, and Affirming, in Part (Feb. 10, 1999) [*MCImetro*].

¹¹ *MCImetro*, ¶ 158.

¹² Waste Management Petition, ¶ 9.

¹³ *Id.* ¶ 10.

¹⁴ *Id.* ¶ 15.

¹⁵ *Id.* ¶ 16 (Emphasis in original).

the WM Wenatchee and WM Ellensburg operating divisions, or limited to billing violations similar to those at issue in this case.¹⁶

- 17 Waste Management also claims that breadth of the suspension condition is inconsistent with other recent orders in which penalties have been mitigated through suspension on condition of compliance. In three cases involving household goods moving companies, the Commission mitigated penalties by suspending all or a portion of the penalties, subject to a condition that the companies comply with a particular rule, e.g., advertising rules for advertising violations, and rules requiring insurance where the company has become a certificated carrier.¹⁷ In a proceeding involving penalties assessed against two telecommunications companies, the Commission suspended the penalties on condition of compliance with a rule governing a company's response to Commission staff following a consumer complaint.¹⁸ Waste Management states that, unlike this case, each of the companies involved had repeatedly violated Commission rules, and yet the Commission narrowly tailored the condition for suspension to the specific rule at issue. The Company argues that it deals with over 1.2 million customers in Washington, and sends out over 4.5 million bills throughout the state. The consequence of one mistake

¹⁶ *Id.* ¶¶ 17-18.

¹⁷ *Id.* ¶¶ 19-20, citing *In the Matter of Jorge Humberto Lumas-Lopez d/b/a UR Moving Solutions*, Docket TV-091621, Order 01, Order Granting Petition for Mitigation, Mitigating Penalty to \$400 and Suspending Remainder for One Year (Dec. 1, 2009); *In the Matter of Determining the Proper Carrier Classification of and Complaint for Penalties against Boubacar Zida, d/b/a Zida Labor and/or Zida Labor Services*, Docket TV-091498, Order 02, Initial Order Classifying Activities As Jurisdictional; Requiring Respondent To Cease And Desist From Jurisdictional Activities Without A Permit; Suspending Penalties (Feb. 9, 2010); *In the Matter of Determining the Proper Carrier Classification of and Complaint for Penalties against Grant E. Farrell, d/b/a Farrell Moving Company*, Docket TV-091500, Order 02, Initial Order Classifying Activities as Jurisdictional; Requiring Respondent to Cease And Desist from Jurisdictional Activities Without a Permit; Suspending Penalties (Feb. 5, 2010).

¹⁸ Waste Management Petition, ¶ 21, citing *In the Matter of the Penalty Assessment Against Cordia Communications Corp.*, Docket UT-090440, and *In the Matter of the Penalty Assessment Against Northstar Telecom, Inc.*, Docket UT-090441 (Consolidated), Order 02, Order Granting, in Part, Petition for Mitigation, Subject to Condition (June 19, 2009).

in any operating division is the assessment of the suspended \$48,105 penalty, a result the Company finds intolerable.¹⁹

- 18 **STAFF ANSWER.** Staff asserts that dismissal of the complaint is not justified, as the violations affected a significant number of customers and Waste Management could have prevented the violations through better quality control. Staff supports modifying the Initial Order to remove the suspended penalty, asserting suspension is not necessary as Waste Management has a good compliance record and refunded the amounts to customers before the Commission took action on the violations.²⁰
- 19 Staff supports the Initial Order’s decision not to dismiss the complaint. Staff argues that the Initial Order accurately identified the Company’s failure to test its new data base before issuing billing statements. Staff also supports the Initial Order’s conclusion that the complaint should not be dismissed as the Company is responsible for its database and the actions of the customer service representatives. Staff asserts that the violations are serious, given the number of customers affected.
- 20 Staff does not support further mitigation of the penalty. Staff argues that the Initial Order already has mitigated the penalty substantially – by 75 percent – from the amount sought in the complaint. While Staff agrees with Waste Management that the Initial Order reflects a misunderstanding of Waste Management’s revenue analysis procedures, Staff argues that correcting the conclusion in the order does not justify further mitigation.²¹ Staff argues that the Initial Order correctly questioned whether the Company would have discovered the billing error within a reasonable period of time. Staff further argues that the Company’s reliance on after-the-fact revenue analysis is not a consumer friendly practice.²²
- 21 Staff argues that suspended penalties are not necessary in this proceeding. Because Waste Management does not have a history of billing violations and “has a relatively

¹⁹ Waste Management Petition, ¶ 24.

²⁰ Staff Answer, ¶ 2.

²¹ *Id.* ¶¶ 4-5.

²² *Id.*

good compliance record overall,” Staff argues that suspended penalties would not create an incentive for the Company to comply with rules in the same way as companies that have a pattern of noncompliance.²³ If the Company were to make similar billing errors in the future, Staff could pursue enforcement and might seek a higher penalty than in this proceeding.

22 If the Commission finds it appropriate to retain suspended penalties, Staff argues that the suspension should be conditioned on narrower terms, specifically limited to compliance with the billing rule in question in this case.²⁴ Staff suggests that the Commission could condition suspension “on compliance for one year with RCW 80.28.080 with respect to billing that affects a group of customers such as a customer class.”²⁵ Narrowing the condition in this way would prevent the suspended penalties being triggered by a single erroneous bill or a violation unrelated to those at issue here.

23 Staff argues that any compliance condition should apply to the whole company and not just to WM Wenatchee and WM Ellensburg. Staff asserts that the Company should bear the responsibility for any compliance conditions and resulting penalties, as the system improvements that led to the billing errors were due to decisions by the statewide Company, not the operating divisions.²⁶

24 **DISCUSSION AND DECISION.** Waste Management’s petition requires that we review not only specific decisions in the Initial Order, including the particular penalty it recommended, but also the Commission’s criteria and practices for assessing penalties and granting mitigation.

25 The Commission may enforce violations of statutory and regulatory requirements, as well as violations of Commission orders or directives by imposing penalties against companies, whether or not the company is a public service company, and may seek

²³ *Id.* ¶ 6.

²⁴ *Id.* ¶ 7.

²⁵ *Id.*

²⁶ *Id.* ¶ 8.

misconduct charges against officers, employees or agents of such companies.²⁷ There are two types of statutes governing penalties. The first, RCW 80.04.405, allows the Commission to assess penalties of up to \$100 per violation per day, for which the respondent must seek mitigation, request a hearing or pay the penalty within fifteen days. The other type of penalty, under RCW 80.04.380 and RCW 80.04.387, allows the Commission to seek penalties of up to \$1,000 per violation per day. The Commission initiates penalty actions under these statutes through a complaint and an adjudicative hearing. The Commission filed the complaint in this case seeking penalties under RCW 80.04.380.

26 The Commission has discretion to choose which statute to apply when violations occur.²⁸ The statutes governing these types of penalties specify that a company that commits a violation “shall *be subject* to a penalty” (RCW 80.04.380) or “shall *incur* a penalty” (RCW 80.04.405) for such violations.²⁹ Under RCW 80.04.380, the Commission retains discretion to assess penalties as a company “shall be subject to a penalty” rather than automatically “incur” a penalty.³⁰

27 As the Company points out in its petition, we consider several criteria when determining the appropriate amount of a penalty,³¹ including our judgment of a company’s future behavior should we impose a penalty. To this purpose we have stated:

The assessment of penalties for violations of law is meant to be corrective, not retributive. The purpose is to secure compliance by incenting reasonable and appropriate conduct by the offending party.³²

²⁷ See RCW 80.04.380, RCW 80.04.385, RCW 80.04.387, RCW 80.04.390, and RCW 80.04.405. These same provisions appear in Title 81 for application to transportation companies.

²⁸ *MCImetro*, ¶ 149.

²⁹ See RCW 80.04.380, and RCW 80.04.405. (Emphasis added).

³⁰ *MCImetro*, ¶ 150.

³¹ See *supra*, para. 15; Waste Management Petition, ¶ 9, citing *MCImetro*, ¶ 158.

³² *MCImetro*, ¶ 154.

- 28 In this case, both parties agree on the facts concerning the violations. In both February and March 2009, Waste Management incorrectly billed more than 3,000 commercial customers of the WM Wenatchee and WM Ellensburg operating divisions by including an “environmental and fuel surcharge” that is not included in their Commission-approved tariffs. The erroneous billings were due to the Company consolidating computer data for the two operating divisions with those for the Company’s Spokane operations, and failing to include certain links. In addition, the Company moved its customer call center, resulting in a number of new customer service representatives, which compounded the billing error. After a customer complained first to the Company and received faulty information from a customer service representative, the customer then called the Commission, where staff identified the violation and contacted the Company. Delays in communication between Company representatives and Commission Staff resulted in frustration by Commission staff in trying to resolve the matter.
- 29 Based on these facts, no party disputes that Waste Management violated RCW 80.28.080 and WAC 480-70-236, which prohibit companies from charging or collecting rates and charges different from those included in their file tariffs. The issue is whether the Commission should impose a penalty for the violations, and if so, how much.
- 30 We concur with the Initial Order’s decision to deny Waste Management’s request to dismiss the complaint, and not impose penalties. We understand that Waste Management believes the complaint and penalties are unnecessary and that the Company may face negative impacts from having a complaint filed or penalties imposed against it. However, a penalty is warranted where a company’s actions result in significant impact to customers, even if the company has taken steps to rectify its error. The Initial Order is correct in concluding that Waste Management is responsible for its operations, billing systems and CSRs, and to ensure its systems are correct and personnel are trained. As the Commission has previously stated, penalties serve a corrective purpose: Dismissing the complaint in this case would imply that a company can incorrectly bill or impact a substantial number of customers without consequence, simply by later correcting the error. Allowing the complaint to go forward and evaluating the appropriate level of penalties creates an incentive for

Waste Management and other companies to ensure compliance with the statutes and rules governing their operations.

- 31 After reviewing the pleadings before the administrative law judge and before us on review, it appears the Initial Order reflects a misunderstanding of the Company's "Day Three" policy, concluding that Waste Management should have been aware of the erroneous billings prior to issuing March bills.³³ The Declaration of Joe Krukowski identifies that the Company would not have reviewed the data resulting from its "Day Three" policy until April – after the March bills were issued.³⁴ We are not persuaded, however, that this misunderstanding rises to the level of error that justifies further mitigation or reduction of the penalty. The Initial Order also identifies other factors, such as whether the Company provided inadequate customer service, the miscommunication between the Company and Staff, the lack of internal oversight over billing processes, and the impact of the billing on customers.³⁵ The Initial Order's conclusion about when Waste Management should have been aware of the problem is just part of the discussion about the appropriate level of penalties and does not appear to be determinative in the decision to impose reduced or suspended penalties.
- 32 The Initial Order appropriately considered a number of the *MCImetro* criteria in evaluating the amount of the penalty; in particular that the Company has a history of compliance with Commission rules, acted promptly to remedy the error by crediting customers, and undertook corrective measures to ensure the billing error would not be repeated.³⁶ In doing so, the Initial Order mitigated the penalty to 25 percent of the total requested amount, and suspended the remaining 75 percent, subject to the condition that Waste Management comply with all Commission rules for one year.

³³ Initial Order, ¶ 43.

³⁴ Declaration of Joe Krukowski, ¶ 19, filed Dec. 2, 2009. The Company has now instituted internal quality controls to ensure that the tax and tariff data are correct prior to each billing cycle.

Id. ¶¶ 16, 18.

³⁵ Initial Order, ¶¶ 42-48.

³⁶ *Id.* ¶ 51.

- 33 We find persuasive the Company's and Staff's arguments that suspension of the remaining penalty amount and the compliance condition are not appropriate given the Commission's actions in recent penalty cases. Waste Management is not a repeat offender, and suspending penalties is not necessary to create an incentive for the Company to continue to comply with billing rules – it has already instituted quality assurance and other internal controls to prevent similar violations. Further, requiring compliance with all Commission rules, rather than tailoring the compliance condition to the rule at issue is inconsistent with the conditions applied in other penalty cases.
- 34 We also agree with Staff that the penalty should be imposed against Waste Management, the statewide company, not its Wenatchee operating division. This is for two reasons. First, Waste Management has chosen its corporate structure, which has one statewide company as the legal entity. Though the Commission has acquiesced for some regulatory purposes in dealing with the various operating divisions, the statewide entity is legally responsible for the entire operation. Second, in any event, as we discuss above, the consolidation of computer databases and implementation of the change without proper internal quality controls was the Company's decision, not WM Wenatchee's. In addition, the Company generated the bills for the operating division. The fault for the billing errors falls with the Company.
- 35 We therefore grant, in part, Waste Management's petition, and modify the Initial Order's recommendations to remove the requirement that the remaining 75 percent of the penalty be suspended, as well as the compliance condition. Waste Management must pay the reduced penalty of \$16,035 to the Commission by the tenth business day following the effective date of this Order.

FINDINGS OF FACT

- 36 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
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- 37 (1) The Washington Utilities and Transportation Commission is an agency of the
State of Washington, vested by statute with authority to regulate the rates,
rules, regulations, practices, and accounts of public service companies,
including solid waste companies.
- 38 (2) Waste Management of Washington, Inc., is a solid waste company and a
public service company subject to Commission jurisdiction.
- 39 (3) Waste Management of Greater Wenatchee and Waste Management of
Ellensburg are subsidiary business units of Waste Management of
Washington, Inc., and collect solid waste under two of Waste Management of
Washington, Inc.'s nine tariffs.
- 40 (4) In December 2008, Waste Management consolidated the computer data
containing city contracts and Commission tariff rates, service levels and
optional charges for its Wenatchee and Ellensburg operating divisions with its
Spokane operations, but dropped several links for creating correct billing
information.
- 41 (5) Also in December 2008, the Company moved its customer call center from
Kirkland to Oak Harbor, resulting in a significant number of new customer
service representatives. These representatives rely on the billing computer
data to respond to customer inquiries.
- 42 (6) Waste Management issued bills to 3,213 commercial customers in its
Wenatchee operating division in February 2009, and 3,201 customers in
March 2009, erroneously billing the customers for an "environmental and fuel
surcharge" that is not contained in the Commission tariff for the operating
division.
- 43 (7) Waste Management did not determine the error in the computer data until after
it had generated the February and March 2009 bills.

- 44 (8) A customer contacted the Company on March 17, 2009, to complain about the surcharge, and the customer service representative referred the customer to the Commission. Commission staff then notified the Company of the error.
- 45 (9) After investigating the issue, Waste Management corrected the billing database, refunded customers for the incorrect billing, implemented quality control and internal control measure to prevent a similar mistake, as well as a regular training program for its customer service representatives.
- 46 (10) Waste Management does not have a history of non-compliance with billing rules or other Commission rules.

CONCLUSIONS OF LAW

- 47 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 48 (1) The Washington Utilities and Transportation Commission has jurisdiction over Waste Management of Washington, Inc.
- 49 (2) Waste Management violated RCW 80.28.080 and WAC 480-70-236 by issuing 6,414 bills to commercial customers in February and March 2009 that included an additional charge not set forth in its Commission approved tariff.
- 50 (3) Under RCW 80.04.380, public service companies are subject to penalties of up to \$1,000 per day for violations of law, rule and Commission order.
- 51 (4) The Commission has discretion under RCW 80.28.080 whether to assess penalties and the amount of the penalty. *MCImetro*, ¶ 150.
- 52 (5) The purpose of assessing penalties for violations of laws, rules and Commission orders is to create an incentive for compliance, not to seek retribution. *MCImetro*, ¶ 154.

- 53 (6) While the violations at issue in this complaint are the result of a computer error by the Company, and the Company corrected the error and refunded customers, the error affected over 3,000 customers – a significant impact. The violations are also due to the Company’s lack of effective oversight and quality control over its billing operations. Given these circumstances, issuing a complaint for penalties is appropriately corrective, as it creates an incentive for companies to comply with Commission rules by understanding the consequences of violations.
- 54 (7) The Initial Order’s misunderstanding of the Company’s “Day Three” revenue review process is not error requiring or justifying a further reduction in the penalty recommended in the Initial Order, as the decision to reduce the penalty was based on several factors, not just the misunderstanding of the Company’s billing review process.
- 55 (8) The suspension of penalties on condition of continued compliance is appropriate when a company has repeatedly failed to comply with laws and rules and suspension will create an incentive for the company to comply.

ORDER

THE COMMISSION ORDERS That:

- 56 (1) Waste Management of Washington, Inc., d/b/a Waste Management of Greater Wenatchee’s Petition for Administrative Review is granted, in part, and denied, in part.
- 57 (2) Order 01, the Initial Order in this proceeding, is modified to reject the requirement that the remaining 75 percent of the penalty be suspended for one year on condition of compliance with all Commission rules.
- 58 (3) Waste Management of Washington, Inc. must pay a penalty in the amount of \$16,035 for its violations of RCW 80.28.280 and WAC 480-70-236. The penalty amount must be paid to the Commission no later than 5:00 p.m. on the tenth business day following the effective date of this Order.

- 59 (4) The Commission Secretary is given discretion to ensure compliance with the
 requirements of this Order, including discretion to implement a payment plan
 upon request made by Waste Management of Washington, Inc., prior to the
 date upon which the penalties become due.
- 60 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective May 7, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.